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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

1997-98
(session year)

Senate
(Assembly, Senate or Joint)

Committee on Education...

COMMITTEE NOTICES ...

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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
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- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
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- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (December 2012)

MINUTES OF MEETING

COUNCIL ON MUNICIPAL COLLECTIVE BARGAINING

TUESDAY, JUNE 13, 1995

9:30 A.M.

The meeting of the Council on Municipal Collective Bargaining scheduled for June 13, 1995 at 9:30 a.m. was called to order on said date and at said time by Chairperson A. Henry Hempe. The following Council members were present: Mary Ann Braithwaite, Kenneth Cole, Chuck Grapentine, Crystal Jorgensen, Robert Lyons, Charles Mulcahy, Rodney Pasch, Mark Rogacki, Robert Weber, and Robert West. Also present were Special Consultants Don Ernest, Michael Julka, Keith Krinke and James Stern and Mary Theisen.

Lyons moved, seconded by Grapentine, approval of the minutes of the Council's meeting on January 30, 1995. The motion passed unanimously.

Jorgensen moved, seconded by Weber, approval of the agenda for the current meeting. The motion passed unanimously.

Jorgensen moved, seconded by Grapentine, that the pre-final report on the Recommendations for a Successor Law to Sec. 111.70(4)(cm) and (7) of the statutes be adopted. Mulcahy suggested that proposed modifications to the report should be discussed. Hempe asked if there were any motions to amend the report.

West moved, seconded by Lyons, to amend the pre-final report by moving consensus bargaining from Article III to Article II and the material in Article II to Article III. In support of his motion, West expressed the opinion that changing the order of these paragraphs made consensus bargaining more prominent.

A roll call vote was taken on the West/Lyons motion to amend and the following vote was recorded: Braithwaite, aye; Weber, aye; Jorgensen, aye; Cole, no; Pasch, no; Grapentine, aye; Lyons, aye; Mulcahy, aye; West, aye; Rogacki, no. There being 7 ayes and 3 noes, the motion passed.

Mulcahy moved, seconded by Jorgensen, to amend the pre-final report by creating a new section, paragraph, II, d, specifically authorizing the WERC to charge fees for training in consensus bargaining. Grapentine inquired why it was necessary to include this as the Commission was already charging fees. Hempe responded that it merely formalizes what is already occurring. Grapentine asked if there was any increase in fees contemplated by the Commission. Hempe responded, "No, not at the present time." Lyons inquired what the fees are. Hempe asked Commissioner Will Strycker to respond. Strycker said that currently the fees for a 2-day session are $80

per trainee, plus expenses; and for a 1-day session are $50 per trainee, plus expenses. Lyons inquired who makes these payments. Hempe answered that each side is responsible, respectively, for the payments for its participants. Grapentine inquired whether the $80 covers the cost of the training. Will Strycker responded to this inquiry by saying that it depends on the number of people in attendance as well as the salary level of the trainer. Lyons inquired whether the proposed provision that parties reaching a successful agreement would have their fees rebated was still in the pre-final draft. Hempe responded affirmatively.

Cole noted that he had received the June 7, 1995 letter to Council members describing possible changes or revisions to the pre-final recommendations. He inquired whether these changes had been requested by Council members. Hempe responded affirmatively. Cole asked if those members could be identified. Hempe responded that a number of Council members had made proposals for changes and he could not accurately identify which proposals had been authored by which individuals at this time. Hempe said he hadn't bothered to keep a meticulous record as to the authorship of the proposals for change since the consensus system which guides Council deliberations provides that no person owns an idea, that it is held in common with other members for acceptance, modification or rejection. (Hempe also informed the Council that within the last few days the transcripts of the public hearings had been completed, and after they were printed they would be distributed.) Cole stated that he did not need to see the transcripts as he made careful notes of the testimony at the public hearings, but he wished he had more time to check with his constituents with respect to the proposed revisions. Cole expressed concern that the Council's credibility could be questioned if the amendments from the original report were dealt with in a hurried manner.

Braithwaite stated that she had not been able to review copies of the report until late last week because she had been out of town. She saw no reason not to act on the proposed revisions, arguing that the Council members were all aware of the testimony at the public hearings, and that it was unnecessary to go back and talk to various constituencies.

Pasch interjected that he was looking at Article III and that he had not heard the term "advocate advantage" before this. West asked where the term had come from. Hempe explained it was used simply to label the process being proposed to replace "DRJ/Tripartite." Pasch stated he needed more time to consider the "Refusal to Arbitrate" section. Mulcahy felt that Cole had brought out a good point and that it would be helpful to have one complete document with any changes made by the Council incorporated in it. Hempe responded that it would not be inappropriate for the Council to amend the pre-final report and then lay it over to study it further. West suggested that if all Council members were to sign a letter directed to the Legislature urging it not to take any action on Sec. 111.70, Stats., he could agree to a delay; he noted that the Legislature is currently meeting and that if it took action there was no sense in wasting the Council's time. He asked the Council members what their respective positions were.

Grapentine inquired whether the Legislature has to consider a letter. West answered that it didn't even have to consider the report. Cole felt that West's suggestion could be confusing in that the Council had expressly opined that the QEO issue was one for the Legislature and the Governor. West expressed disagreement with Cole as to whether a letter from the Council would be confusing.

Rogacki noted that several days ago he saw that the Joint Finance Committee had taken a vote on interest arbitration which came out 9-7; he said he didn't know whose fingerprints were on it or who thinks certain fingerprints were on it. He indicated he was still on the same page as other Council members and he and his group continue to advocate no legislative action until the final Council report is issued. Lyons inquired whether Rogacki would sign a letter as suggested by West. Rogacki responded that he was not willing to sign a letter, but his position continued to be that the Legislature take no action until the Council's final report is issued and the Council has completed its work.

Grapentine noted that the way the Council has progressed is to discuss a concept and after a discussion to vote on it. He felt that the Council could move through the proposed revisions and vote on each, as has been Council's practice. Grapentine pointed out that the Council has been meeting for 1 1/2 years and he was anxious to discuss any remaining items and complete the Council's task. Lyons added that the Council has to complete its product or ask the Legislature to delay, and if the Council doesn't, any future action it takes may be obsolete. He expressed the sentiment that the Council has danced with successor law issues for a long time and urged it to finish its task.

Braithwaite suggested that the Council should look at the proposed revisions on an issue-by-issue basis. Hempe said he was hearing that some Council members may wish to mull matters over and check with their constituents. Grapentine stated that we need one document and then we need to approve a final report and it doesn't have to be a month from now. Hempe suggested it could be in 2 weeks.

Jorgensen stated the Council needs to debate the issues.

Rogacki suggested that the Council vote in support of a motion that the Chairperson communicate with the Legislature that the Council is nearing completion of its report within a certain time frame and ask that the Legislature take no action until the report comes out.

Mulcahy moved, seconded by Rogacki, that the Chair communicate to the Legislature that the Council is nearing completion of its report and ask that it not take any action with respect to Sec. 111.70 until the report is completed.

Rogacki noted that under the motion the Council members would not be signing a letter, but the Chair could communicate the Council's direction that he communicate to the Legislature the sense of the motion. Rogacki suggested that the Council return

the week after the 4th of July and vote on the final report. Grapentine inquired whether that time-frame fell within the same time-frame legislative action is anticipated. Lyons stated that if interest arbitration issues are kept out of the budget then there is plenty of time for consideration of any proposed changes.

A roll call vote was taken on the Mulcahy/Rogacki motion and the following vote was recorded: Braithwaite, aye; Weber, abstain; Jorgensen, aye; Cole, no; Pasch, aye; Grapentine, no; Lyons, aye; Mulcahy, aye; West, aye; Rogacki, aye; Weber, aye. There being 8 ayes and 2 noes, the motion passed.

A roll call vote was taken on the Mulcahy/Jorgensen motion (regarding fees) and the following vote was recorded: Braithwaite, aye; Weber, aye; Jorgensen, aye; Cole, aye; Pasch, aye; Grapentine, aye; Lyons, aye; Mulcahy, aye; West, aye; Rogacki, aye. There being 10 ayes and 0 noes, the motion passed unanimously.

Motion by Pasch, seconded by Rogacki, to delete Article III, A, 5 in its entirety as well as the new (proposed) Article III, A, 5 entitled "Advocate Advantage." Cole raised a point of order in that it is impossible to delete something ("Advocate Advantage") if it is not in. Hempe sustained the point of order.

Pasch withdrew his motion, and Rogacki, his second.

Theisen wanted to go back to the pre-final report and delete from it. Grapentine asked whether Pasch's intent was to remove III, A, 5. Lyons said that would remove any default procedure. Grapentine urged discussion of the "Advocate Advantage" section.

Motion by West, seconded by Braithwaite, to delete DRJ/Tripartite section from the report and substitute in lieu thereof the "Advocate Advantage" section except the title, "Advocate Advantage" would be subsequently changed to one more descriptive. West said there was quite a bit of testimony against the tripartite panel approach expressed at the public hearings. Grapentine asked for explanation of the new time-lines delineated in the proposed substitution. Hempe said the DRJ/Tripartite system had built-in an extra 40 days. The proposed substitute section has time-lines consistent with the time-lines for other interest arbitration processes. The informational discussion between the panel members (which was thought to be a favorable feature of the tripartite system) is retained by the informal communication permitted by joint conference of the parties with the arbitrator by either phone, E.mail or other communications under the proposed substitute. The new model envisions less cost, while still retaining a form of fact-finding by permitting the arbitrator to issue a non-conventional award (with the consent of the parties). He noted that under this model the arbitrator is not required to issue suggestions for settlement. Grapentine asked what if a party didn't want "suggestions." Hempe noted that on page 2, paragraph C specifically states that "suggestions" will be issued only with the consent of the parties. Weber asked what happens if the parties do consent and then reach an agreement as to some of the issues. Shouldn't the parties be allowed to amend

their final offers, Weber queried. Grapentine said that a Council philosophy had been to get the parties to an agreement by making them take their first final offers seriously. Hempe agreed, although he noted that an alternate approach is incorporated into section "e" of 6 on page 3, 7 lines from the bottom of the section (Refusal to Arbitrate).

Cole said he believes most of the public hearing testimony was to the effect that the witnesses like what the present law provides but will accept the pre-final report provisions. It's like you're choreographing a dance and have made it more cumbersome," Cole said. "I don't see this as better than what we had before. It's just more cumbersome. I don't think we should make this more difficult," Cole concluded. Grapentine said he was looking strictly at the "Advocate Advantage" section. He likes its shortness and relative simplicity. He believes it successfully addresses the testimony that we heard.

Jorgensen said that the "advocate advantage" system provides a way to put a message out to the people whom advocates represent. She sees it as helping the advocate move the parties he or she represents towards a responsible settlement.

The West/Braithwaite motion was clarified as including a renumbering of Article III, A, 5, e and f to d and e.

Lyons noted that Article III, Section A, Subs. 5.b states an arbitrator "may conduct a joint informal conference" and inquired at whose discretion that conference would be conducted. Hempe said the arbitrator would have the discretion under the proposed revision. Grapentine opined that "may" should be "shall", but only with consent of the parties. He added that paragraph c of Article III, A, 5 should also state "shall" instead of "may." Theisen suggested that paragraphs b and c have the same phrasing. Thus "b" should read "within 5 days following appointment of final arbitrator and with the consent of the parties, said arbitrator shall...". That should be consistent with paragraph c. Theisen's suggestion was accepted by West and Braithwaite who agreed to incorporate it in their motion. Jorgensen asked why are we not requiring the arbitrator to make the suggestions, noting that this is a default option and should include some discomfort. West said that if both sides don't agree to issuance of "suggestions for settlement," the process would be a waste of time as it was under fact-finding.

A roll call vote was taken on the West/Braithwaite motion (as amended by the incorporation of the Theisen suggestion) and the following vote was recorded: Braithwaite, aye; Weber, aye; Jorgensen, abstain; Cole, no; Pasch, no; Grapentine, aye; Lyons, aye; Mulcahy, aye; West, aye; Rogacki, no; Jorgensen, aye. There being 7 ayes and 3 noes, the motion passed.

Hempe noted that Item #6 appeared to be in tandem with Item #3 and suggested it would be appropriate to take up Item #6 next.

Motion by Mulcahy, seconded by West to approve Item #6 which: deletes IV, A, B and C; deletes all references to the DRJ/Tripartite and DRJ which appear in V; recreates IV, A through H, inclusive (which replicates sections A through E, except for the deletion of the terms DRJ/Tripartite and DRJ); Section F is a paraphrase of the first three sentences of the old IV, and sections G and H replicate the old paragraph IV, D and E except that the term "arbitrator" is substituted for "tripartite panel" in D.

Grapentine asked for clarification as to what happens to A, B and C. Hempe explained that subs. A through H on page 3 of the proposed revised draft are a consolidation of articles IV and V of the pre-final draft. He also noted that in paragraph D of the new article IV, the second sentence should be deleted.

A roll call vote was taken on the Mulcahy/West motion and the following vote recorded: Braithwaite, aye; Weber, aye; Jorgensen, aye; Cole, no; Pasch, no; Grapentine, aye; Lyons, aye; Mulcahy, aye; West, aye; Rogacki, aye. There being 8 ayes and 2 noes, the motion passed.

Braithwaite asked for a review of what was just done. Referring to page 6 of the pre-final report, she asked if I, II, III and IV were still there and V was changed by consolidating it with IV. Hempe said her understanding was correct.

Motion by Mulcahy, seconded by West to create III, C, exempting parties from the services fees when the units involved have received consensus bargaining training from the WERC within the past 6 months.

Cole argued against the motion, stating his view that there should be an additional penalty if the parties don't reach an agreement.

Lyons asked how this would change the Joint Finance Committee action which set the fee at $225.

Hempe said he believes the phraseology refers to a reasonable fee up to $225, so $225 is the maximum. The provision being considered by the Council was intended to exempt those who expended consensus fees from also making an additional payment. Hempe suggested amending the draft to read "... not to exceed $225."

Weber asked whether there is anything magical about the 6 month time-frame, and Hempe responded there was not. Lyons inquired as to the "expenses." Hempe said the proposed revision was not intended to go beyond what the Joint Finance Committee of the Legislature has done. Mulcahy said he made the motion simply to support the agency. Hempe said, "I think by this proposal we are trying to avoid the appearance of overreaching. If we charge $800 to $1,000 for consensus bargaining, it might seem excessive if we were to then ask the parties for another $112.50 apiece for mediation."

Lyons moved to modify Article III, C by striking "and expenses" and adding "not to exceed the amounts authorized by the legislature." Mulcahy and West said they would accept that as a friendly amendment to their motion.

Grapentine asked whether there was still a provision for a rebate on consensus, and Hempe responded affirmatively, pointing to Article II, B.

Pasch asked if the parties have to reach a complete contract in order to be eligible for the rebate. The answer from a number of Council members was "yes."

A roll call vote was taken on the Mulcahy/West motion with respect to paragraph C as amended by the friendly amendment and the following vote was recorded: Braithwaite, aye; Weber, aye; Jorgensen, aye; Cole, aye; Pasch, aye; Grapentine, aye; Lyons, aye; Mulcahy, aye; West, aye; Rogacki, aye. There being 10 ayes and 0 noes, the motion passed.

Motion by Mulcahy, seconded by Grapentine, to approve Item #7 (relating to Section VI, Innovation Proposals) as follows:

A. An innovation proposal is a proposal which suggests a new or different means or method, the primary purpose of which is to increase operating efficiency and/or effectiveness.

B. The parties shall have a duty to meet and confer with respect to any innovation proposal made by either party, but nothing herein shall be construed to prevent the employer from unilaterally implementing any innovation proposal which may constitute a permissive subject of bargaining.

C. Only those innovation proposals primarily related to wages, hours and conditions of employment shall be deemed mandatory subjects of bargaining and thus eligible for interest arbitration. In the event the parties proceed to interest arbitration to resolve their labor dispute, an innovation proposal made by either party which is subject to interest arbitration shall be decided on the basis of whether the adoption of such proposal is more reasonable than adoption of a counter-proposal made by the opposing party in opposition thereto. Each innovation proposal and counter-proposal shall be individually adjudicated on this basis, without regard to the remaining total package offered by either party.

Grapentine suggested that Article VI, Section C be amended to read "... more reasonable than adoption of a counter proposal, <u>if any</u>, ...", and both Mulcahy and Grapentine agreed to incorporate the suggestion in the motion.

Cole said he was against the Innovation Proposals provision for two reasons. First, the parties can always get together in the bargaining process. Second, he

believes the proposal will reduce innovation by increasing litigation. Cole said he didn't hear many at the public hearings who were in favor of this provision but heard some comments against it.

Grapentine said he feels that those who were against it didn't understand it. He announced his support for the proposal.

Mulcahy explained that the revised proposal was intended to meet objections to the original. Instead of referring to a "mandatory subject of discussion," the term was changed to "meet and confer". In addition, clarification was added to the arbitral standards by which innovation proposals would be judged.

Rogacki said he favored innovation. He added that the revised proposal may not be perfect but "we're getting close and I support it."

Braithwaite said: "Some of my members are fearful of this proposal, but I agree with Mark. This is an important piece to be included in the draft."

Pasch expressed his view that the proposal would be counter-productive, because it indicates that everything flows through bargaining, instead of committees to work on innovation.

Jorgensen disagreed. She said she saw the provision as allowing employes to be innovative. There are a lot of places out there that are not the same as a vocational-technical school setting, Jorgensen said, adding that innovation is relatively rare in collective bargaining, so it's important that this provision stays in.

Braithwaite noted that the term "meet and confer" is not bargaining so there shouldn't be any confusion that bargaining is required.

Cole observed that he would view with interest any arbitration order requiring the incorporation into the labor agreement of an innovative proposal. He doesn't believe the parties will be innovative just because an arbitrator requires it.

West, responding to Pasch, offered his view that employer-created committees are not appropriate in the presence of a collective bargaining representative. Pasch said he agreed with West, but added that that isn't what is happening at his institution.

Lyons argued that with the changes that Mulcahy has suggested, two things have been lost. "The revision simply says 'means or method', but what is that?", Lyons inquired. "Do we still intend means or method of performing the employer's operational responsibilities?", Lyons asked. Second, Lyons pointed to the "and/or" between efficiency and effectiveness. We now have two separate bases whereas in the past we had just one. Mulcahy responded that he would have no problem

reinserting the words "of performing the employer's operational responsibilities, the primary purpose of which is to ...". Lyons said he still objected to the "and/or" insertion.

Theisen pointed out what may be efficient might not be effective. West said he believes the door swings in both directions and can help each side. Cole said he simply wanted to point out that the Urban School Negotiators Association opposed this particular proposal.

A roll call vote was taken on the Mulcahy/Grapentine motion and the following vote recorded: Braithwaite, aye; Weber, aye; Jorgensen, aye; Cole, no; Pasch, no; Grapentine, aye; Lyons, no; Mulcahy, aye; West, aye; Rogacki, aye. There being 7 ayes and 3 noes, the motion passed.

Lyons moved, seconded by Grapentine, the following motion:

> The Council is concerned that the public sector collective bargaining laws in Wisconsin provide a consistent framework within which local government employers, labor organizations, and Arbitrators must operate. In this regard, the Council notes that the "protective occupations" constitute a large and growing segment of county and municipal budgets. While not specifically within its charge, the Council recommends that the changes in this report relating to the redefinition and weighting of the factors that Arbitrators must consider when rendering their decisions and the "innovation" language also apply to arbitration proceedings involving "protective" employees that take place pursuant to section 111.77 of the Statutes. Adoption of this recommendation will help to provide a consistent set of standards for Arbitrators to follow in cases involving county and municipal employees, as well as to provide a measure of equity between various employee groups.

Cole asked whether Sec. 111.77, Stats., provides for issue-by-issue interest arbitration.

Hempe said that Sec. 111.77, Stats., provides for conventional interest arbitration, if the parties agree.

Grapentine noted that the City of Milwaukee and the City of Milwaukee Police Dept. has conventional arbitration.

Mulcahy reminded Council members that there was some support in the public hearings for the Lyons proposal.

Lyons said he asked each of the county employer representatives at the public hearings about this matter and each responded that the law should be consistent.

Pasch said he doesn't know anything about Sec. 111.77, Stats., so he can't respond to the motion.

A roll call vote was taken on the Lyons/Grapentine motion with the following vote recorded: Braithwaite, aye; Weber, abstain; Jorgensen, abstain; Cole, abstain; Pasch, abstain; Grapentine, aye; Lyons, aye; Mulcahy, aye; West, aye; Rogacki aye; Weber, no; Jorgensen, no; Cole, no; Pasch, no. There being 6 ayes and 4 noes, the motion failed for lack of a sufficient majority.

Jorgensen explained that she voted no because she needs some feedback. She said she'd like to reconsider the proposal after she's had a chance to consult with her constituency. Rogacki also expressed the hope that the proposal would come back, saying he thinks it's addressing equity in the system. Cole offered his opinion that the item probably would have enough legislative support to pass without any action by the Council. Lyons asked the Chair whether the motion could be placed on the agenda for the next meeting. Hempe asked if there were any objections to doing so. Hearing none, he stated the item will be put on the agenda for the Council's next meeting.

The Council next took up the proposed "Refusal to Arbitrate" section which read as follows:

6. Refusal to Arbitrate

a. Following certification by the WERC that a deadlock exists a municipal employer may lawfully refuse to participate in interest arbitration by majority vote of its governing body.

b. In the event the governing body of a municipal employer shall vote to refuse to participate in interest arbitration:

1) The parties shall have a continuing obligation to bargain in good faith until the labor dispute is resolved;

2) Following an affirmative strike vote taken by the authorized bargaining representative of the members of the affected bargaining unit, said employes shall have the right to strike, on a minimum of 10 days notice to the municipal employer and the WERC;

3) In the event of a strike, the municipal employer shall have the right to lock-out members of the affected bargaining unit on a minimum of 10 days notice to the authorized bargaining representative for said bargaining unit and the WERC;

c. In the event of a municipal employe strike or lock-out, the WERC shall attempt to mediate a settlement of the issues between the parties.

d. A municipal employer may repudiate its prior refusal to participate in interest arbitration by a majority vote of its governing body. In this event any employe right to strike and employer right to lock-out shall expire 24 hours following the recording and announcement of said vote by the clerk for said governing body.

e. In the event of a strike or strike and lock-out, upon petition by any interested party (including a member of the public) to a court of competent jurisdiction, following hearing and a finding by the court that it is probable a strike or strike and lockout will place the health, safety or welfare of members of the community in unreasonable jeopardy the court may enjoin the strike or strike and lock-out, as the case may be, on such terms and conditions as appear reasonable to the court. In the event the parties have not resolved their dispute within the ensuing 60 days following the issuance of an injunction by the court, the injunction shall be renewed for an additional 60 days. The parties shall submit their respective final offers to the court within 10 days thereafter, together with exhibits and briefs in support thereof and the court shall schedule a hearing on the matter to be held within 10 days following submission of said final offers, exhibits and briefs. Within 20 days following hearing by the court, the court shall issue "Suggestions for Settlement" to the parties which shall represent the court's best judgment as to a reasonable, equitable, acceptable and complete basis for settlement of the labor dispute and need not adhere to the form or substance of either final offer of the parties. In the event the parties fail to resolve their dispute within 10 days following issuance of the court's "Suggestions for Settlement", each party shall be permitted to submit to the court a revised final offer within said time-period and the court shall select the final offer of one side or the other to be inserted in the labor agreement of the parties. Such award shall be binding upon each of the parties and shall be issued within 120 days following the issuance of the first injunction by the court.

Mulcahy moved, seconded by Grapentine, to approve the creation of Article III, A, 6, "Refusal to Arbitrate."

West moved, seconded by Lyons, to amend by substituting the default process set forth in Article III, A, 5 after the injunction is granted instead of having a judicial order. West said that as he understands this proposal, if the employer doesn't want to arbitrate, the employes may strike; if the employes strike, then the employer or member of the public can petition for an injunction. West said he doesn't think an employer should be able to avoid having to go to arbitration by going to a different forum. The court has no expertise in this particular area, according to West, and West doesn't believe the Council should reinvent the wheel. West added he has some political concerns as well, because judges are elected.

Ernest said he didn't see why the Council has this proposal at all. He believes it is a bad procedure. Why should the employer be the one to decide, Ernest asked. Mulcahy said there are only two ways to resolve a dispute: 1) arbitration or 2) a strike. Without arbitration, a strike is an appropriate way to resolve the matter. West noted that a court may not always grant an injunction so a strike could continue. Jorgensen disagreed. "Courts will grant it," she said. "If there's snow in the wintertime or construction in the summertime, there will always be a reason to grant it," Jorgensen argued. She also believes the 10 days' notice requirement takes the bite out of a strike. Jorgensen further stated her belief that strike and worker replacement is the goal of many employers. She agreed with Ernest that this is a bad procedure.

Mulcahy urged Council members to look at the proposal from a legal viewpoint. At impasse, he said, the employer makes the selection. If the employer doesn't agree to arbitration, then the employes can, but are not required to, go on strike. "An injunction is not always granted," Mulcahy said. "In Racine, I was there for 27 days while the strike continued and the judge kept us in the room until it got resolved," Mulcahy explained.

Weber offered his opinion that a judge is less likely to grant an injunction when he/she will then be involved in its resolution. Grapentine thought the procedure is too complicated. Lyons said he supported the amendment because he thinks the courts are overburdened and they would lobby the legislature not to adopt the provision as written because they have such a large workload at the present time. Hempe asked if under the proposed amendment the judge would have to order arbitration or would it be automatic? West responded it would be automatic after the 60 days had elapsed.

Mulcahy said he was going to support the amendment. He believes the only way to get a new law through the legislature is by including the provision. If inclusion requires arbitration, he will support it. Mulcahy further believes the courts may not have time for this.

Braithwaite asked if only the employer can petition for injunction against the strike or lockout. Mulcahy responded that any concerned citizen can petition for one.

Jorgensen asked that the procedure be described. Mulcahy explained that first a petition would have to be filed alleging that the health, safety or welfare of the community is in unreasonable jeopardy, that is, there will be irreparable harm. The court will probably grant a temporary restraining order and then conduct a hearing. Following a hearing, an injunction may or may not be issued.

Weber noted that in Pennsylvania, only a party can petition for an injunction.

A roll call vote was taken on the West/Lyons amendment and the following vote was recorded: Braithwaite, aye; Weber, no; Jorgensen, aye; Cole, no; Pasch, aye; Grapentine, aye; Lyons, aye; Mulcahy, aye; West, aye; Rogacki, no. There being 7 ayes and 3 noes, the motion passed.

Moved by Lyons, seconded by West, to amend the section to reduce the 60 day period following issuance of an injunction to a 30 day period.

Lyons argued that the parties have already reached impasse; then the employer opts for a strike, then petitions for an injunction and the judge issues an injunction. Parties should not have to wait more than 30 days after that to proceed to arbitration. Anything more is needless delay.

Mulcahy disagreed. He said an injunction can be obtained in one day; if a party gets to arbitration only 30 days later there probably isn't enough time to motivate the parties to reach a voluntary settlement. West argued the Council should be consistent; speed up this process as well as the others. "Speed has been a concern," West said. "Impasses should be resolved as quickly as possible."

Mulcahy observed that once the parties have gone through a strike, particularly a lengthy strike, they are less likely to strike again and West agreed. Krinke noted that there is first the 30 days before arbitration, then 60 days for arbitration and finally 40 days for a decision. He said that's a fairly long time. He believes it could be settled during this period of time and that 30 days one way or the other is not critical. Grapentine asked whether the 60 day reference on page 3 applied to page 1, and Hempe responded affirmatively. Cole argued that the parties would get an injunction quickly following a strike. How long it takes to go to arbitration really doesn't make any difference, Cole continued. Cole believes the matter should be left in the hands of the judge who will affect a settlement more quickly. Cole said the judge may tell the parties to go into a room and settle their dispute before he issues an injunction. But if it has to go elsewhere, then the judge would not be involved and would probably grant the injunction, Cole concluded.

A roll call vote was taken on the Lyons/West motion and the following vote was recorded: Rogacki, no; West, aye; Mulcahy, no; Lyons, aye; Grapentine, no; Pasch, aye; Cole, no; Jorgensen, aye; Weber, aye; Braithwaite, aye. There being 6 ayes and 4 noes, the motion failed for lack of a sufficient majority.

West moved, seconded by Mulcahy, to reconsider the prior motion to amend the Refusal to Arbitrate process by substituting the arbitration procedure for the court's decision.

A roll call vote was taken on the motion and the following vote was recorded: Rogacki, aye; West, aye; Mulcahy, aye; Lyons, aye; Grapentine, aye; Pasch, aye; Cole, aye; Jorgensen, aye; Weber, aye; Braithwaite, aye. There being 10 ayes and 0 noes, the motion to reconsider passed.

West withdrew his earlier motion to substitute arbitration for the judicial decision; Mulcahy withdrew his second; thus the Refusal to Arbitrate proposal reverted to its original form as proposed.

Moved by Lyons, seconded by Jorgensen, to amend the Refusal to Arbitrate proposal by deleting the 10 day notice except for health care.

Arguing for the motion, Jorgensen said that if a strike is to be inserted into the law, it should be put in all the way, for this would bring parties to a settlement more quickly. The 10 day notice does not get the parties to a settlement, Jorgensen said, adding that outside of health care, 10 days' notice is unnecessary. "Let's have a level playing field," Jorgensen urged.

But West responded that if he has a bargaining unit that votes to authorize a strike, he will give notice to the employer immediately; the strike won't occur for at least 10 days but it can be called anytime after that. West doesn't see a disadvantage in giving 10 days' notice. He noted that the proposal provides the employer has a 10 days' notice requirement for a lockout which he likes and would want; thus West doesn't see the 10 day notice as being a significant issue.

Grapentine asked if both parties would have to agree to a strike for there to be one. West responded that the right to strike would be triggered solely by the employer's refusal to go to arbitration.

A roll call vote was taken on the Lyons/Jorgensen motion on the 10 day notice and the following vote recorded: Rogacki, no; West, no; Mulcahy, no; Lyons, aye; Grapentine, no; Pasch, aye; Cole, no; Jorgensen, aye; Weber, no; Braithwaite, aye. There being 4 ayes and 6 noes, the motion failed.

Moved by Jorgensen, seconded by Lyons, that a provision be added to the Refusal to Arbitrate proposal that there be no replacement workers hired.

Mulcahy argued against the motion saying he believes that where people's lives are in danger, say at a hospital, the employer needs workers. Mulcahy said he couldn't support a proposal which would endanger people's lives. Jorgensen again argued for a level playing ground. She said, "There are some employers out there that want to get rid of the employes and replace them."

A roll call vote was taken on the Jorgensen/Lyons motion to amend and the following vote recorded: Rogacki, no; West, aye; Mulcahy, no; Lyons, aye; Grapentine, no; Pasch, no; Cole, no; Jorgensen, aye; Weber, aye; Braithwaite, aye. There being 5 ayes and 5 noes, the motion failed.

Hempe asked if there were any further proposals to amend. There appeared to be none.

Lyons said it was clear to him what the intent of the Refusal to Arbitrate proposal is, and he opposes it. He said, :"We're better off without any law than this: "it's not at all consistent with the 8 public hearings we've held; not one person who came to the hearings ever suggested this, either side; it is not an equitable solution; if this was in the back of someone's mind, he or she should have brought it forward earlier."

Jorgensen added that at the public hearings the speakers stated that there was no interest in a strike and this came mostly from public employers. This is consistent with her own perceptions based on conversations she'd had recently with public employer officials. Jorgensen said a mutual option in the public section would be acceptable, but it's not a desirable option. Pasch added his voice in opposition to strike. He believes there are more advanced ways to resolve disputes, and simply can't support a strike. Cole noted that strikes are not mentioned in the pre-final report. Braithwaite said she recalls during the public hearings that strikes were mentioned quite a bit because of the sunset provision in the law, and the people who referred to the fact-finding era called it the "bad old days."

Lyons said that during the first 4 hearings, no one was pushing a strike. West agreed that no one likes strikes. It forces bargaining, however. If the relationship has deteriorated and it's so bad, then a strike is appropriate, West believes. He said he is a believer that what drives a process is the investment that's put into it. West thinks a strike is a deterrent to force and forge better settlements. Mulcahy argued that any fair minded person recognizes the need for an option -- either the right to arbitration or the right to strike. If the law sunsets, there won't be either. There will be no arbitration and no right to strike. Mulcahy acknowledged that it may not sit well with some that in this particular proposal the employer has the right to determine whether to proceed to arbitration or not and the employes then can decide to strike; but practically speaking the provision is needed to get the entire proposed law passed.

Lyons disagreed. He said the provision doesn't create a level playing field. He said labor has compromised a great deal, particularly in weighting the factors to be considered by the arbitrator. But the strike provisions that are proposed here put onerous procedures on employes. There is notice. There is a judge making the decisions. There are the injunctions. Everything is tilted against the union, according to Lyons. If the shoe was on the other foot and the union had all the options, Lyons was sure that the employer would feel as Lyons does.

Mulcahy reiterated the need for legislation that will pass and his belief that the Council's recommendation will not pass without the Refusal to Arbitrate proposal. Lyons responded that if there is no law, then the same scenario that has happened in the 70's will occur. He said the union survived that and it'll survive until the political climate changes. "But this is a better law," said Mulcahy. Lyons recognized that it was better for the employer, but not for the unions. "Don't tell us what is better for us; it's better to have no law at all than this," Lyons said.

A roll call vote was taken on the Mulcahy/Grapentine motion approving the Refusal to Arbitrate proposal, and the following vote recorded: Rogacki, aye; West, aye; Mulcahy, aye; Lyons, no; Grapentine, aye; Pasch, no; Cole, aye; Jorgensen, no; Weber, aye; Braithwaite, no. There being 6 ayes and 4 noes, the motion failed for lack of a sufficient majority.

Braithwaite pointed out the need for a name to replace the title "Advocate Advantage."

The title "Expedited Dispute Resolution" was agreed to by consensus.

Hempe noted that Article III, B then would remain as is except that it would read ". . .they shall be automatically placed in the Expedited Dispute Resolution System as set forth in Article III, A, 5. above."

Mulcahy reiterated that another vote would be taken on the pre-final draft as amended at a later date. Hempe agreed.

A roll call vote was taken on the original Jorgensen/Grapentine motion to adopt a pre-final report as now amended and the following vote recorded: Rogacki, no; West, aye; Mulcahy, aye; Lyons, aye; Grapentine, aye; Pasch, aye; Cole, no; Jorgensen, aye; Weber, aye; Braithwaite, aye. There being 8 ayes and 2 noes, the motion passed.

A discussion ensued as to the next date for the Council meeting. It was agreed that the Council would meet on August 11, 1995 at 9:30 a.m. in Madison.

Motion by West, seconded by Jorgensen, to adjourn. The motion passed unanimously.

* * * * * *

RESPECTFULLY SUBMITTED:

A. HENRY HEMPE, CHAIRPERSON
COUNCIL ON MUNICIPAL COLLECTIVE BARGAINING

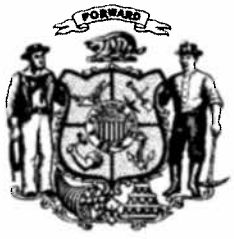
0613.95.min

FOR YOUR CALENDAR

THE FOLLOWING IS A LIST OF COUNCIL MEETING OR PUBLIC HEARING DATES THROUGH 6/95.

DATE	EVENT	LOCATION	TIME
8/11/95	COUNCIL MEETING	MADISON, WI	9:30 AM


WISCONSIN STATE LEGISLATURE


FORWARD

Guiding Principles of CMCB

- Allow for local problem solving;
- Foster open, honest and direct communications between the parties;
- Be clear and administratively feasible;
- Promote labor-management peace;
- Promote voluntary settlements;
- Encourage the uninterrupted delivery of high-quality public services at a reasonable cost;
- Be fair to all those with a stake in the collective bargaining process;
- Encourage creativity in the labor/management relationship.


FORWARD
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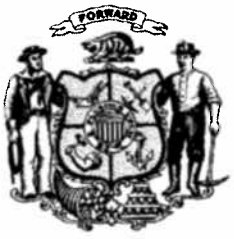
BRIEF DESCRIPTION OF COUNCIL CHANGES TO PRE-FINAL RECOMMENDATIONS AT MEETING ON 6/13/95

1. "Consensus Bargaining" section moved from III to II (and "Dispute Resolution Models" from II to III).

2. "DRF and Tripartite Process" (See Pre-final Recommendations, II, A, 5, pp. 6-7) eliminated and "Expedited Dispute Resolution System" (See "Amended Pre-final Outline Summary," II, A, 5, pp. 1-2) substituted in lieu thereof.

3. "Innovation to Increase Efficiency and Effectiveness" process is more precisely defined. (Cf. Pre-final Recommendations, VI, pp. 9-10 with "Amended Pre-final Outline Summary, pp. 3-4).

WISCONSIN STATE LEGISLATURE



A. Henry Hempe
Chairperson
Herman Torosian
Commissioner
William K. Strycker
Commissioner

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P.O. Box 7870
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State of Wisconsin
Wisconsin Employment Relations Commission

August 8, 1995

Dear Legislator:

As you are aware, the new duties of the Council on Municipal Collective Bargaining which were mandated by 1993 Act 16 have been eliminated by virtue of a provision of the recently enacted State Budget for 1995-97.

These are the minutes of the last Council meeting which took place under the aegis of Act 16.

The Council was originally created in 1985 as principally an advisory body to the Wisconsin Employment Relations Commission. It was reconstituted by (nonstatutory) Section 9120(2y) and(2z) of 1993 Act 16. Its augmented mission included analysis and assessment of each of the changes proposed by the Governor to Sec. 111.70(4)(cm) of the statutes in 1993 Senate Bill 44 and submission of recommendations for changes to Sec. 111.70(4)(cm) and 7(m).

Beginning in December, 1993, the Council met on a regular, monthly basis. To date, it has met a total of 16 times and, in addition, conducted 8 public hearings in various parts of the state. (4 of the hearings were conducted in 1994 in Pewaukee, Rhinelander, LaCrosse and Milwaukee; the remaining 4 were conducted in 1995 in Milwaukee, Green Bay, Eau Claire and Madison.)

In January, 1995, it submitted its Analysis and Assessment of Each of the Changes Proposed by the Governor for Changes to Sec. 111.70(4)(cm) in 1993 Senate Bill 44.

In late January, 1995, the Council also produced its Pre-final Recommendations for a Successor Law (to Ch. 111.70 municipal labor dispute resolution procedures). Although this product could have been submitted to the Legislature by early February, 1995, the Council deemed it advisable to submit it instead to public scrutiny by conducting 4 more public hearings in various locations within the state. As a result of those hearings, some modifications to the Pre-final Recommendations were made.

The enclosed minutes of the Council's meeting on June 13, 1995, explain those changes. The minutes were approved by an 8 - 0 vote of the Council at a meeting conducted by telephone on July 28, 1995. By the same vote, the Council authorized the two members who were missing from the telephone conference call to indicate their approval of the June 13, 1995 minutes at a later time. Both did so. The Council also directed that a copy of an outline of the Council's "Amended Pre-final Recommendations" (which reflects its final work product as modified at its last meeting on June 13, 1995) be included as a clarifying exhibit to the minutes, along with its original Pre-final Recommendations.

On behalf of the Council, I want to express its appreciation for the opportunity for representatives of organized labor and municipal employers to convene and work towards a common goal. It succeeded in shaping the format of its subsequent discussions and debates by unanimously (10 - 0) establishing a set of "Guiding Principles"; by another unanimous (10 - 0) vote it adopted an Analysis and Assessment of Each of the Changes Proposed by the Governor Section 111.70(4)(cm) in 1993 Senate Bill 44; by a 7 - 3 vote, it adopted its Pre-final Recommendations for a Successor Law; finally, by an 8 - 2 vote it produced an Amended Pre-final Report (Outline).

The Council is pleased to observe a few of its recommendations have been enacted into law as a part of the adopted Budget. While it would have preferred to have completed its work prior to legislative action, it recognizes and respects the fact that the state political process as reflected by the Governor and the members of the Legislature is the alpha and omega of municipal labor relations, and that end-products of that process cannot always be perfectly coordinated with other events.

On behalf of each individual member of the Council I extend best wishes to the Governor and each member of the Legislature. Each Council member -- and I -- share with all of you the hope that municipal labor relations in the State of Wisconsin will continue to reflect the proud tradition of peaceful, productive municipal collective bargaining which has been established in this state by the energies and examples of numerous representatives of each side working together toward that end.

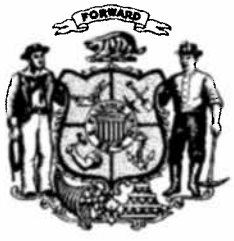
Yours faithfully,

COUNCIL ON MUNICIPAL COLLECTIVE BARGAINING

A. Henry Hempe
Chairperson

AHH/kam
cmcbf.ltr
Enclosure
cc: Members, Council on Municipal Collective Bargaining


WISCONSIN STATE LEGISLATURE


FORWARD

Amended Pre-final

OUTLINE SUMMARY OF RECOMMENDATIONS OF COUNCIL ON MUNICIPAL COLLECTIVE BARGAINING ADOPTED BY 8-2 VOTE on 6/13/95

I. Parties to determine whether they want to utilize consensus or traditional collective bargaining model within thirty (30) days of first meeting.

II. Consensus Bargaining

A. Parties opting to try this model shall receive training from the WERC or other qualified training resources.

B. State to reimburse parties for training fees and expenses incurred following parties reaching voluntary settlements.

C. If parties fail to reach voluntary settlement, no reimbursement for training fees and expenses, but parties retain option of selecting a dispute resolution model. (See III, A, 1-5.)

D. WERC to be authorized to charge reasonable fees and expenses for consensus bargaining training.

III. If parties opt for traditional model, in the event they reach a WERC certified bargaining impasse, they must mutually determine within thirty (30) days of such certification which of the following dispute resolution models they will use.

A. Dispute resolution models.

1. Legal right of employes to strike; legal right of employers to lockout.

2. Mediation as set forth in Sec. 111.87., Stats.; fact-finding as set forth in Sec. 111.89, Stats.; and prohibition of employe strikes as set forth in Sec. 111.89, Stats. (All of above statutory references are to sections of the State Employment Relations Act - SELRA.).

3. Final package interest arbitration as set forth in Sec. 111.70(4)(cm)6., provided that neither party shall be permitted to include more than five (5) issues in its final offer except in those cases where the parties are attempting to obtain an initial agreement.

4. Other mutually agreed upon impasse procedures filed with the Commission.

5. Expedited Dispute Resolution System

a. WERC to submit final offer of each side to final arbitrator.

b. Within 5 days following appointment of final arbitrator, with the consent of each of the parties said arbitrator shall conduct a joint, informal conference with a

designated advocate of each side for the purpose of clarifying the final offer of each party. Such conference may be conducted in person, telephonically or by E-mail, or by any combination of said methods of conference.

c. Within 15 days from the conclusion of the evidentiary hearing and with the consent of the parties the arbitrator shall issue "Suggestions for Settlement" of the dispute. Such "Suggestions" shall represent the arbitrator's best judgment as to a reasonable, equitable, acceptable and complete basis for settlement of the labor dispute, and need not adhere to the form or substance of either final offer of the respective parties.

d. Within 10 days of the issuance of said "Suggestions", the parties shall meet for the purpose of considering the "Suggestions" and attempting to reach a voluntary agreement.

e. If, following consideration of "Suggestions for Settlement", the parties fail to reach a voluntary settlement within the required time, or no "Suggestions for Settlement" were submitted in timely fashion to the parties for consideration, the arbitrator shall select the total final offer of one side or the other to be inserted in the labor agreement of the parties. Such award shall be binding on each of the parties and shall be issued by the arbitrator within forty (40) days following the conclusion of the evidentiary hearing. The award shall be based solely on the judgment of the arbitrator as to which final offer best meets the relevant statutory criteria.

B. In the event the parties are unable to reach agreement as to their preferred dispute settlement model within thirty (30) days of their impasse being certified, they shall be automatically be placed in the Expedited Dispute Resolution System as set forth in III, A, 5, above.

C. WERC to be authorized to charge reasonable service fee not to exceed the amount authorized by the legislature for any investigative, mediation or facilitation services provided to the parties except in those cases where the bargaining unit together with the employer has received consensus bargaining training from the WERC for which charges have been made within six (6) months of the commencement of said investigative, mediation or facilitation services.

IV. Arbitration Proceedings

A. In all cases requiring the appointment of an arbitrator, such arbitrator shall be appointed through random selection by the WERC unless the parties mutually agree to the contrary. If either side objects in writing filed with the Commission within three (3) days of said appointment, a replacement shall be appointed by the Commission through random selection. In the event the other party files a written objection with the Commission within three (3) days of the appointment of said replacement, a third arbitrator or judge shall be appointed.

B. All arbitration hearings shall be scheduled to be conducted within sixty (60) days of the initial appointment of the arbitrator.

C. In all arbitration proceedings, the parties shall exchange exhibits twenty (20) days before hearing.

In the event either party objects to an exhibit offered by the other, it shall file an objection in writing with the arbitrator at least five (5) days prior to hearing.

D. In all arbitration, the parties shall exchange hearing briefs and file respective hearing briefs with the arbitrator at leave five (5) days before hearing. No post-hearing briefs shall be considered.

E. All arbitration awards shall be issued within forty (40) days following hearing, except as may be otherwise expressly set forth herein.

F. The arbitrator may establish dates and places of hearing, and shall conduct the hearings under rules established by the Commission. Upon request, the Commission shall issue subpoenas for hearings being conducted by arbitrator. The arbitrator may administer oaths.

G. Extensions to the aforesaid time limits shall be granted by the arbitrator only upon a showing of exceptional need . A stipulation between the parties to extend the time limits shall not, by itself, constitute a legal basis for the extension of any time limits.

H. In the event either party fails to comply with the pre-hearing time requirements, the brief or evidence of said party shall not be considered.

V. In making any decision under arbitration procedures authorized in this section, the arbitrator shall make the award based upon the following factors in descending order of importance as follows:

A. GREATEST WEIGHT: State legislation and administrative directives which place limits on local spending or revenue.

B. GREATER WEIGHT: Local and/or state economic conditions.

C. WEIGHT:

1. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes of the employer and of other public and private sector employes performing similar services in the same community and in comparable communities.

2. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through collective bargaining in the public service or in private employment.

VI. Innovation to Increase Efficiency and Effectiveness

A. An innovation proposal is a proposal which suggests a new or different means or method of performing the employer's responsibilities, the primary purpose of which is to increase operating efficiency and/or effectiveness.

B. The parties shall have a duty to meet and confer with respect to any innovation proposal made by either party, but nothing herein shall be construed to prevent the employer from unilaterally implementing any innovation proposal which may constitute a permissive subject of bargaining.

C. Only those innovation proposals primarily related to wages, hours, and conditions of employment shall be deemed mandatory subjects of bargaining and thus eligible for interest arbitration. In the event the parties proceed to interest arbitration to resolve their labor dispute, an innovation proposal made by either party which is subject to interest arbitration shall be decided on the basis of whether the adoption of such proposal is more reasonable than adoption of any counter-proposal, if any, made by the opposing party in opposition thereto. Each innovation proposal and counter-proposal shall be individually adjudicated on this basis, without regard to the remaining total package offered by either party.

VII. Declaration of Policy (To Be Inserted at Beginning of Sub-Chapter 4)

A. It is the intent of the legislature that the municipal governmental bodies of the State provide efficient service to the public and that municipal employers and employes should be encouraged to develop and introduce new and innovative methods to improve the operating efficiency and effectiveness of local government.

B. Harmonious, cooperative employment relations and the efficient administration of municipal government promote this public interest. These ends are best served by the establishment of cooperative and mutually satisfactory employe-management relations, and the availability of suitable procedures for adjustment of controversies. It is recognized that whatever may be the rights of parties with respect to each other in any controversy regarding municipal employment relations, neither party has any right to engage in acts or practices which present a clear and present danger to the health, safety and welfare of the public.

C. It is in the public interest to encourage voluntary settlement through procedures of collective bargaining. Municipal employes shall be given the opportunity to bargain collectively with the municipal employer through a labor organization or other representative of the employes' own choice. If such procedures fail, the parties should have available to them a fair, speedy, effective and peaceful procedure for settlement as provided in this subchapter.

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